

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NICOLETA SONERIU AND IOAN I.
SONERIU, husband and wife and the
marital community thereof,

Plaintiffs,

v.

YALNES, INC.; SERGEY A. PETROV;
PODY & MCDONALD, PLLC;
PATRICK M. MCDONALD; DEAN H.
PODY; and

JOHN DOES 1-20,

Defendants.

CASE NO.

COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

1.1 This is an action for damages and remedies against the above-captioned Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* (“FDCPA”); the Washington Collection Agency Act, RCW §§ 19.16, *et seq.*

COMPLAINT - 1



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1 (“WCAA”); and the Washington Consumer Protection Act, RCW §§ 19.86, *et seq.* (“CPA”),
2 which prohibit debt collectors from engaging in abusive, deceptive, and unfair acts and
3 practices.

4 1.2 The above-captioned Defendants violated the above laws by, *inter alia*,
5 attempting to collect and/or collecting an alleged debt not due and owing, misrepresenting
6 the amount of the alleged debt, attempting to collect and/or collecting collection costs not
7 recoverable under Washington law, and attempting to collect and/or collecting an alleged
8 debt without a license.

9 1.3 Defendant Yalnes, Inc. (“Yalnes”) also violated the CPA by, *inter alia*,
10 knowingly and unscrupulously mailing the above-captioned Plaintiffs’ billing statements
11 and other correspondence to the wrong address, causing Plaintiffs to fall behind on
12 payments, and, therefore, unduly subjecting them to further collection activities.

13 II. JURISDICTION AND VENUE

14 2.1 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and
15 1367 on the grounds of federal question jurisdiction and supplemental jurisdiction.

16 2.2 Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because it is the
17 judicial district in which a substantial part of the events or omissions giving rise to this case
18 occurred, or a substantial part of property that is the subject of the action is situated.

19 2.3 Venue is proper in the Western District of Washington at Seattle pursuant to
20 Western District of Washington CR 5(e).

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22 //

23 COMPLAINT - 2



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III. PLAINTIFFS

3.1 Plaintiffs Ms. Nicoleta Soneriu and Mr. Ioan I. Soneriu (“Sonerius”) are natural persons residing in Snohomish County, Washington. The Sonerius are “consumers” as defined by the FDCPA, 15 U.S.C. § 1692a(3).

IV. DEFENDANTS

4.1 Plaintiffs Ms. Nicoleta Soneriu and Mr. Ioan I. Soneriu (“Sonerius”) are natural persons residing in Snohomish County, Washington. The Sonerius are “consumers” as defined by the FDCPA, 15 U.S.C. § 1692a(3).

4.2 Defendant Pody & McDonald, PLLC (“P&M”) is a Washington State based law firm that repeatedly attempted to collect and collected an alleged debt from the Sonerius. P&M’s registered agent is Christopher S. Beer, 2033 6th Avenue #350, Seattle, WA 98121. P&M is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

4.3 Defendants Patrick M. McDonald and Dean H. Pody are the owners, operators, and governing, and/or managing members of P&M. Patrick McDonald and Dean Pody are “debt collectors” as that term is defined under 15 U.S.C. 1692a(6). Upon information and belief, Patrick McDonald and Dean Pody personally participated in: (1) the formation of P&M; (2) formation of its collection policies and procedures; (3) collecting of the debts of others; and (4) the agreements with homeowners’ associations and/or property management companies for the collection of fees and/or costs not expressly authorized by Washington law. On information and belief, Patrick McDonald and Dean Pody reside in King County.



4.4 Defendant Yalnes is a Washington limited liability company engaged in the business of managing homeowners' associations in Washington, including the Greenbrook II Condominium Association located Snohomish County, Washington, the community where the Sonerius' reside. Yalnes' principal place of business is located in King County, Washington and within the jurisdiction of this Court. Its registered agent is Sergey A. Petrov, 3214 W McGraw St, Suite 314, Seattle, WA 98199. Yalnes engages in the collection of delinquencies, as expressly advertised on Yalnes' website, using the federal postal service, mail, and telephone, and Yalnes regularly attempts to collect debts alleged to be due to another, including to homeowners' associations.

4.5 Sergey A. Petrov is the owner, operator, and governing, and/or managing member of Yalnes. Sergey A. Petrov is a "debt collector" as that term is defined under 15 U.S.C. 1692a(6). Sergey A. Petrov regularly collects or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Upon information and belief, Sergey A. Petrov personally participated in: (1) the formation of Yalnes; (2) formation of its collection policies and procedures; (3) collecting of the debts of others; and (4) the agreements with homeowners' associations for the collection of fees not expressly authorized by Washington law. On information and belief, Sergey A. Petrov resides in King County.

4.6 John Does 1-10 are employees or agents of P&M and "debt collectors" as that term is defined under 15 U.S.C. 1692a(6).

4.7 John Does 11-20 are employees or agents of Yalnes and "debt collectors" as that term is defined under 15 U.S.C. 1692a(6).



1 5.6 In January 2015, however, the Sonerius received no monthly billing
2 statements for their homeowners' dues.

3 5.7 Instead, in or about April 2015, approximately four months later, they
4 received a payment booklet containing monthly coupons for 12 payments of \$75.00 for the
5 entire year of 2015, from January 2015 through December 2015.

6 5.8 Almost immediately after they received the payment booklet, they mailed
7 separate payments for the prior months in the year of 2015, so as to ensure they stayed
8 current on their monthly dues.

9 5.9 For the remaining of 2015, every month, the Sonerius used those payment
10 coupons to pay their dues by mailing their payments in accordance with those coupons.

11 5.10 In January 2016, the Sonerius, again, received no payment booklets or billing
12 statements for their monthly dues.

13 5.11 Relying on the parties' prior conduct, they thought little of the situation as
14 they had received no billing statements or payments couples in 2015 until much later in the
15 year.

16 5.12 They reasonably believed they would receive either a billing statement or a
17 payment booklet which would tell me the amount of the payment and where to mail their
18 payment, just like they did in the past.

19 5.13 In fact, according to the Association's governing documents, the Association
20 must notify each property owner in writing of the amount of the homeowners' dues or
21 assessments.



5.14 However, in or about August 2016, having still received no such notification, the Sonerius became concerned.

5.15 They immediately contacted StrataNext, which informed them that it was no longer managing the Association's affairs.

5.16 Unbeknownst to the Sonerius, the Yalnes had been hired to manage the Association's day-to-day affairs. Yalnes' responsibilities included the collection of delinquencies, just like Yalnes actively advertises on its website. In fact, Yalnes did attempt to collect on what it believed was the Sonerius' delinquent account by phone and mail.

5.17 The Sonerius were shocked and frustrated. For they had received no notices, including from Yalnes, that Yalnes was now managing the Association.

5.18 On information and belief, Yalnes had assumed the Association's management, collections, and other responsibilities in or about May 2016.

5.19 The Sonerius were confused, aggravated, and frustrated when they learned from Yalnes that, unbeknownst to the Sonerius, Yalnes had been sending all their mail to the wrong address.

5.20 What was ever more confusing and upsetting to the Sonerius was that they did not understand why—instead of sending their mail to the condominium—Yalnes would send their mail to a completely different address, which they never gave to Yalnes, StrataNext, or the Association.

5.21 Again, the Sonerius had been unaware this whole time that Yalnes was even involved with the Association.



1 5.22 On August 4, 2016, after the Sonerius had complained to Yalnes, Yalnes
2 admitted that it knew that it had entered incorrect mailing addresses into its system for some
3 of the Association's property owners, including the Sonerius.

4 5.23 One month before then, curiously, Yalnes had issued a July 2016 Newsletter
5 in which it sang own praises that it had "successfully incorporated all the Association's
6 records into their systems." This statement was false, deceptive, and misleading.

7 5.24 Further, on information and belief, as the entity responsible for the
8 Association's day-to-day affairs, including the collection of homeowners' dues, Yalnes took
9 no actions on its own to attempt to correct the errors in its system. Improperly and without
10 investigation, Yalnes continued to send the Sonerius' mail to the wrong address.

11 5.25 By this time, having still received no billing statements or payment coupons,
12 the Sonerius had no idea as to what was the status of their account, including any
13 outstanding balance or the amount of the assessments.

14 5.26 Nor were they able to obtain any meaningful information from Yalnes.

15 5.27 Thereafter, they were extremely shocked to learn that they had a past due
16 balance of approximately \$1,500.00. Among other things, Yalnes' statement showed
17 unknown interest charges and monthly dues of \$100.00 instead of \$75.00.

18 5.28 In its subsequent communications, Yalnes claimed that the Sonerius' monthly
19 dues were \$219.70, which caused even more confusion and aggravation to the Sonerius.

20 5.29 Again, although the Association's government documents expressly require
21 that the Association shall notify the owners in writing regarding the amount of the general
22 and special assessments, the Sonerius received no such notification in 2016.



1 5.30 Nor did the Sonerius receive any such notification from Yalnes.

2 5.31 On several occasions, they tried to obtain an adequate and meaningful
3 explanation regarding the claimed outstanding balance, all to no avail.

4 5.32 When the Sonerius telephoned Yalnes, Yalnes' representative told them that
5 Yalnes had nothing to talk to them about and that, if they had any more questions, they
6 should call their lawyer.

7 5.33 In the meantime, despite the lack of adequate and meaningful response to their
8 complaints, since they now knew where to mail their payments, they paid their monthly
9 homeowners' dues in care of Yalnes, just like they were paying them before: they mailed a
10 \$75.00 check in August 2016, a \$75.00 check in September 2016, and a \$75.00 check in
11 October 2016. They mailed their payments to Yalnes' location in Seattle, WA.

12 5.34 The next written communication they received was a letter, dated November
13 11, 2016, from P&M stating that P&M was "acting as debt collector" regarding the
14 Sonerius' alleged delinquent assessments. A copy of the letter is attached hereto as **Exhibit**
15 **A** and incorporated by reference. P&M claimed that the Sonerius had "an outstanding
16 balance of \$1,431.23 for delinquent assessments through November 3, 2016."

17 5.35 P&M also stated in the letter that "[t]his balance does not include
18 unbilled/unposted attorney fees and collection expenses, which will total no less than an
19 additional \$496 and which will be added to the account balance for any validated delinquent
20 amounts."



1 5.36 To the Sonerius' shock, P&M's November 11, 2016 letter further stated that
2 the Association had a lien on their property. The lien was not recorded until November 15,
3 2016, four days later and before the Sonerius received any communication from P&M.

4 5.37 The Sonerius called the Association and/or Yalnes to ask why they had not
5 been warned by the Association and/or Yalnes before this action was taken and was told to
6 call P&M. When the Sonerius insisted that they be given an explanation, they were told that
7 it was "because you didn't pay your entire amount in time."

8 5.38 P&M's November 11, 2016 letter failed to contain any itemization of the
9 alleged debt.

10 5.39 P&M's November 11, 2016 letter also threatened to charge interests and costs
11 of collection, including attorney fees, on a monthly basis whether or not litigation is
12 initiated, foreclose the lien against the Sonerius' condominium, bring a lawsuit against them,
13 accelerate their assessments, and/or require security deposit of 12 months' assessments if
14 this matter was not resolved.

15 5.40 Shortly after the Sonerius received P&M's November 11, 2016 letter, they
16 contacted P&M stating that they disputed the alleged debt. First, they disputed the amount of
17 the alleged debt. The Sonerius previously paid all their dues on time and were never notified
18 about any alleged increases in their homeowners' dues or any alleged special assessments,
19 even though the Association's governing documents expressly require that the Association
20 shall notify the owners in writing of the amount of any general and special assessments.
21 They have repeatedly requested an explanation of their account so that they could
22 understand the charges. No meaningful explanation has been provided to them. As such, the
23



1 Sonerius continue to believe their account is in error. Second, having received no prior
2 notices regarding the alleged delinquent assessments, the Sonerius effectively disputed they
3 were in default or delinquent and the propriety of being sent to collections and charged
4 associated fees and costs.

5 5.41 Additionally, on information and belief, the common area they were paying
6 the Association to maintain had been neglected and no attempts were made to correct the
7 problem. Among other things, the Association failed to clear the common areas of snow and
8 ice.

9 5.42 P&M asked the Sonerius to fax any documentation supporting their position.

10 5.43 Later, the Sonerius learned that P&M charged them a \$442.00 fee for
11 reviewing those documents.

12 5.44 In the meantime, they received a November 28, 2016 letter regarding the
13 “collections policy for accounts which are in arrears.” This is the policy that, *inter alia*, all
14 delinquent accounts will be handled through an attorney and assessed interest and “legal
15 charges.” This is the policy that purportedly explained how delinquent accounts would be
16 handled.

17 5.45 On information and belief, this “collections policy” was adopted after the
18 Sonerius received any communication from P&M and did not go into effect, if at all, until
19 January 1, 2017.

20 5.46 By letter dated December 22, 2016, P&M acknowledged that the Sonerius
21 disputed the balance owed on their account but stated that the Association did not agree to
22 waive any of the charges. The letter also stated that the Sonerius now owed \$2,302.28. The



1 discrepancy between the two claimed amounts was not explained in the letter. A copy of this
2 letter is attached hereto as **Exhibit B** and incorporated by reference.

3 5.47 The December 22, 2016 letter also threatened that the lien will not be released
4 unless the Sonerius paid the alleged balance in full.

5 5.48 Importantly, the Sonerius were in the process of attempting to refinance the
6 loan encumbering their condominium. They were concerned about the impact of
7 Defendants' collection actions on, *inter alia*, their credit rating and the entire refinance
8 process. They thought they had no choice but to pay the alleged debt.

9 5.49 According to a purported accounting ledger received from P&M, the principal
10 balance was \$1,662.28, which they paid in full in late December 2016. *See* Exhibit B. They
11 withheld payment of the remaining balance, which purportedly constituted the \$442.00 fee
12 P&M charged for purportedly validating the alleged debt and a \$73.00 "lien Release
13 recording fee," because they believed that Defendants had improperly charged those fees.

14 5.50 In or about January 2017, the Sonerius received another letter, dated January
15 6, 2017, from P&M threatening that the lien will not be released unless they paid the
16 demanded payment of \$645.01, which included attorney fees and costs.

17 5.51 The January 6, 2017 letter also included a confusing copy of a purported
18 account ledger, which contained handwritten additional fees or costs. A copy of this letter is
19 attached hereto as **Exhibit C** and incorporated by reference.

20 5.52 Despite the lack of adequate and meaningful response to their complaint, the
21 Sonerius made payments on their account.



1 5.53 While P&M was attempting to collect the alleged debt, by email dated
2 February 9, 2017, Yalnes claimed that, as of November 30, 2016, the Sonerius had an
3 outstanding balance of \$1,360.15, although P&M had stated in the November 11, 2016 letter
4 that the balance through November 3, 2016, was \$1,431.23. The discrepancy between the
5 several claimed amounts was not explained in Yalnes' email.

6 5.54 Yalnes' February 9, 2017 email also claimed that the Sonerius' account "was
7 turned over to the attorney in December 2016, although P&M had issued the November 11,
8 2016 letter regarding the alleged debt. Yalnes' provided inaccurate or misleading
9 information to the Sonerius and misrepresented the level of attorney involvement in their
10 case. On information and belief, P&M did not act in the legal capacity when sending that
11 letter.

12 5.55 Causing further confusion and frustration to the Sonerius, Yalnes' February 9,
13 2017 email also claimed that "the amount due to your account by [February 15, 2017] is
14 \$179.80."

15 5.56 However, by letter dated that same day, February 9, 2017, P&M claimed that
16 the remaining balance at the time was \$344.78. A copy of this letter is attached hereto as
17 **Exhibit D** and incorporated by reference.

18 5.57 P&M's February 9, 2017 letter also threatened that the lien would not be
19 released unless the Sonerius paid the alleged balance in full and included a ledger with a
20 handwritten note that \$344.74 included a "January legal" fee of \$26.00 and an "est. February
21 legal" fee of \$26.00.

22 5.58 By that time, the Sonerius' frustration and aggravation became even worse
23



1 5.59 They had no idea what the January and February fees were for. Nor did
2 P&M's statement provide any explanation. On information and belief, the Sonerius had not
3 yet incurred the "estimated" February fee at the time.

4 5.60 This ledger also contained late fee and interest charges, as well as misleading
5 information inconsistent with the information previously received from Defendants.

6 5.61 For example, the ledger dated January 5, 2017 stated that the Sonerius made
7 the \$1,662.28 payment on December 28, 2016. *See* Exhibit C. However, the ledger dated
8 February 8, 2017 stated that that payment was made on January 3, 2017, presumably after
9 the policy regarding collections went into effect. *See* Exhibit D.

10 5.62 Similarly, the ledger, dated January 5, 2017, stated that attorney fees of
11 \$442.00 and \$106.00 were applied on November 30, 2016, and December 30, 2016,
12 respectively; while the ledger dated February 8, 2017 stated that those fees were applied on
13 December 2, 2016, and January 11, 2017, respectively.

14 5.63 Further, by letter dated February 24, 2017, P&M claimed that the remaining
15 balance was \$545.54. A copy of this letter is attached hereto as **Exhibit E** and incorporated
16 by reference. Yet, Yalnes claimed that the Sonerius' balance as of that date was \$243.17.

17 5.64 P&M's February 24, 2017 letter also included a confusing copy of a purported
18 ledger, with certain entries crossed out by hand, that the Sonerius had been charged a \$35
19 fee in addition to other fees. *See* Exhibit E. However, the Sonerius had mailed the payment
20 at issue on time. This was not the first time the Sonerius were charged a late fee even though
21 they had mailed their payment on time.



1 5.65 The Sonerius telephoned P&M to inquire about all the discrepancies and
2 confusions. They asked P&M whether P&M would charge them for the call and for
3 answering their questions. In response, the person answering the phone rudely said “I am not
4 going to break the law for you” and hung up the phone.

5 5.66 Upon information and belief, Yalnes engages in a pattern and practice of
6 posting timely received payments until after the deadline so as to assess late fees.

7 5.67 By letter dated March 15, 2017, P&M produced a similarly confusing ledger
8 containing certain entries crossed out by hand. A copy of this letter is attached hereto as
9 **Exhibit F** and incorporated by reference.

10 5.68 By letter dated March 21, 2017, P&M informed the Sonerius that their account
11 was now paid in full through March 2017. The March 21, 2017 letter further stated that
12 “[e]nclosed for your review is a copy of your updated ledger showing the calculation of the
13 balance.” In fact, the March 21, 2017 letter included no account ledgers. A copy of this letter
14 is attached hereto as **Exhibit G** and incorporated by reference.

15 5.69 The Sonerius were never given a copy of the final ledger.

16 5.70 That same day, Yalnes falsely claimed that the Sonerius owed \$667.28. A
17 copy of the screenshot of Yalnes’ website is attached hereto as **Exhibit H** and incorporated
18 by reference.

19 5.71 Due to Defendants’ actions, the Sonerius have, thus far, been unable to obtain
20 a refinancing of the property.

21 5.72 The Sonerius believed that Defendants’ actions were illegal. Accordingly,
22 they sought assistance of counsel.



5.73 Upon information and belief, P&M engages in a pattern and practice of unlawful debt collection practices.

5.74 As a direct consequence of Defendants' actions or inactions, the Sonerius have suffered and continues to suffer actual damages, including: (a) lost time; (b) embarrassment and humiliation; (c) aggravation and frustration; (d) fear; (e) anxiety; (f) financial uncertainty; (g) unease; (h) emotional distress, including from false, improper, and confusing nature of Defendants' collection efforts; and (i) expenses, including in seeking and retaining counsel.

VI. THE FAIR DEBT COLLECTION PRACTICES ACT

6.1 The obligation to pay a condominium assessment constitutes debt under the FDCPA when the condominium was purchased as a personal residence. *See Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 698 F.3d 290, 293 (6th Cir. 2012). *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 875 (7th Cir. 2000).

6.2 The FDCPA is a strict liability statute. *Reichert v. Nat'l Credit Sys., Inc.*, 531 F.3d 1002, 1004 (9th Cir. 2008).

6.3 The FDCPA is designed to protect consumers who have been victimized by unscrupulous debt collectors, regardless of whether a valid debt exists. *Baker v. G. C. Servs. Corp.*, 677 F.2d 775, 777 (9th Cir. 1982).

6.4 The FDCPA does not limit liability to business entities or employers; rather, liability extends to all "debt collectors." The principles of vicarious and joint and several liabilities also apply.



6.5 Further, courts apply the FDCPA using a “least sophisticated consumer” standard, which ensures that the “FDCPA protects all customers, the gullible as well as the shrewd ... the ignorant, the unthinking, and the credulous.” *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1171 (9th Cir.2006). The “least sophisticated consumer” standard presents a lower bar for a plaintiff to overcome than does the familiar “reasonable person” standard. *Terran v. Kaplan*, 109 F.3d 1428, 1431–32 (9th Cir.1997).

6.6 Under certain federal statutes, including the FDCPA, emotional distress damages are available as a possible species of damages to be proven under the federal standard of proof. *Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 157 (2003) (holding that “without proof of physical manifestations of the claimed emotional distress” a plaintiff can still recover emotional distress damages under the Federal Employers’ Liability Act).

Violation of 15 U.S.C. § 1692e

(Against P&M: Counts 1 – 16)

(Against Yalnes: Counts 1 – 8)

6.7 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

6.8 Under 15 U.S.C. § 1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. This includes:

- i. false representation of the character, amount, or legal status of any debt (§ 1692e(2));
- ii. The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action (1692e(4));



1 iii. The threat to take any action that cannot legally be taken or that is not intended to
2 be taken (1692e(5)); and

3 iv. The use of any false representation or deceptive means to collect or attempt to
4 collect any debt or to obtain information concerning a consumer (1692e(10)).

5 6.9 Virtually all Defendants' actions described here constitute false, deceptive, or
6 misleading representations or means in connection with the collection of an alleged debt,
7 including but not limited to the following as separate and distinct violations:

8 i. P&M asserting in the correspondence that collection costs could be assessed
9 against the Sonerius. However, in Washington, such costs are not recoverable.
10 *See* RCW 19.16.250(21).

11 ii. P&M and Yalnes asserting in the correspondence that the Sonerius were
12 delinquent on their assessments when in fact they were not because they had
13 received no written notices of the amounts of the assessments.

14 iii. P&M and Yalnes asserting in the correspondence that interest had accrued on
15 the account, even though the account was not delinquent or otherwise in default.

16 iv. P&M asserting in the correspondence that P&M was acting as debt collector
17 even though it never registered as such, contrary to Washington law.

18 v. P&M asserting in the correspondence that attorney fees could be assessed
19 against the Sonerius. However, in Washington, reasonable attorney fees are
20 available only by statute or contract. The applicable collection policy did not go
21 into effect until January 1, 2017, nor did Sonerius breach any of their
22 contractual obligations.

23 vi. P&M threatening to not release the lien when the lien was improperly asserted
24 and recorded (each occasion being a violation).

 vii. P&M threatening to foreclose the lien against the Sonerius' condominium.

 viii. P&M threatening to collect a debt, including while acting as a collection agency
 without a license.

 ix. P&M threatening to bring a lawsuit against the Sonerius, including while acting
 as a collection agency without a license.



- x. P&M threatening to accelerate their assessments, and/or require security deposit of 12 months' assessments, even though the Sonerius were not delinquent or otherwise in default.
- xi. P&M and Yalnes demanding amounts not owed (each occasion being a violation).
- xii. P&M and Yalnes misstating and/or misrepresenting the amount of the alleged debt (each occasion being a violation).
- xiii. P&M representing in written correspondence that the Sonerius owed "estimated" legal fees when in fact these amounts were not owed.
- xiv. P&M and Yalnes providing the Sonerius with inaccurate and inconsistent accounting information, including confusing and misleading account ledgers and statements.
- xv. P&M representing in written correspondence in March 2017 that a ledger showing the calculations was included when in fact no such ledger was included.
- xvi. Yalnes and P&M misrepresenting the level of attorney involvement in their case.
- xvii. Yalnes mailing the Sonerius' billing statements to the wrong address.
- xviii. Yalnes contacting the Sonerius directly after receiving notice that any communication should be directed to the Sonerius' counsel.

6.10 Accordingly, P&M violated 15 U.S.C. § 1692e, and/or its subsections, on at least seven (16) occasions, and Yalnes violated 15 U.S.C. § 1692e, and/or its subsections, on at least seven (8) occasions

6.11 The Sonerius are entitled to recover statutory damages, actual damages and reasonable attorney fees and costs.

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COMPLAINT - 19



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Violation of 15 U.S.C. § 1692f

(Against P&M: Counts 17 – 32)

(Against Yalnes: Counts 9– 16)

6.12 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

6.13 Under 15 U.S.C. § 1692f, a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

6.14 The foregoing allegations constitute unfair and unconscionable means to collect or attempt to collect a debt.

6.15 Defendants have used unfair or unconscionable means to collect or attempt to collect charges, finance interest, and attorney fees in excess of the collection charges interest, and attorney fees expressly allowed by law, in violation of 15 U.S.C. § 1692f and other provisions of the FDCPA.

6.16 Accordingly, P&M violated 15 U.S.C. § 1692f, and/or its subsections, on at least seven (16) occasion, and Yalnes violated 15 U.S.C. § 1692f, and/or its subsections, on at least seven (8) occasions.

6.17 The Sonerius are entitled to recovery statutory damages, actual damages and reasonable attorney fees and costs.

Violation of 15 U.S.C. § 1692g

(Against P&M: Count 33)

(Against Yalnes: Counts 17)

6.18 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.



1 6.19 Under 15 U.S.C. § 1692g(a), within five days after the initial communication
2 with a consumer in connection with the collection of any debt, a debt collector shall, unless
3 the following information is contained in the initial communication or the consumer has
4 paid the debt, send the consumer a written notice containing: (1) the amount of the debt; (2)
5 the name of the creditor to whom the debt is owed; (3) a statement that a consumer has the
6 right to dispute and seek verification of the debt; and (4) the consumer's right to request the
7 name and address of the original creditor. The debt collections also have a duty to state in its
8 initial written communication that the amount of the debt might vary from day to day
9 because of, for example, interest, late charges, or other charges. *See Miller v. McCalla,*
10 *Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 876 (2000).

11 6.20 Defendants failed to comply with these duties.

12 6.21 Yalnes failed to include in its initial communication to the Sonerius that they
13 had a right to request verification and/or validation of the alleged debt. Again, Yalnes is a
14 debt collector subject to the FDCPA in part because the Sonerius were allegedly delinquent
15 when Yalnes was hired by the Association.

16 6.22 Defendants failed to state in their initial written communication to the
17 Sonerius that the amount of the debt might vary from day to day.

18 6.23 Defendants failed to notify the Sonerius in their initial written communication
19 of their right to obtain an up to date amount of the debt allegedly due.

20 6.24 Accordingly, Defendants violated 15 U.S.C. § 1692g.

21 6.25 The Sonerius are entitled to recover statutory damages, actual damages and
22 reasonable attorney fees and costs.



Violation of 15 U.S.C. § 1692c
 (Against Yalnes: Count 18)

6.26 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

6.27 Under 15 U.S.C. § 1692c(a), without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.

6.28 In April 2017, the Sonerius' counsel informed Yalnes that any verbal or written communication regarding this matter should be directed to their Sonerius' counsel.

6.29 Thereafter, Yalnes continued to communicate directly with the Sonerius.

6.30 Accordingly, Yalnes violated 15 U.S.C. §§ 1692c.

VII. WASHINGTON'S COLLECTION AGENCY ACT

7.1 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

7.2 Defendants violated the WCAA.

7.3 The Sonerius are "debtors" as defined by RCW § 19.16.100(7).

7.4 P&M is a "collection agency" as defined by RCW § 19.16.100(4)(a).



7.5 Yalnes is a “collection agency” as defined by RCW § 19.16.100(4)(a). Yalnes was attempting to collect the alleged debt or claim on behalf of a third-party, here, the Association. The debt or claim in question was allegedly in default when Yalnes was hired by the Association. As such, Yalnes was attempting to collect a debt unrelated to the operation of a business other than that of a collection agency. In the alternative, Yalnes, as the alleged creditor’s agent, used a name other than that of the alleged creditor and thus indicated to the Sonerius that a third person, here, Yalnes, was collecting or attempting to collect the alleged claim or debt.

7.6 Defendants are a “licensee” or employees of a “licensee” as that term is defined by RCW § 19.16.100(9).

7.7 Defendants wrongfully sought to collect a “claim” from the Sonerius as defined by RCW § 19.16.100(2).

7.8 Defendants participated in conduct or with knowledge approved of conduct in violation of the WCCA to include, but not limited to, the following:

Violation of RCW 19.16.250(8) and RCW 19.16.250(9)

(Against P&M: Count 34)

(Against Yalnes: Count 19)

7.9 The WCAA requires that collection agencies obtain licenses.

7.10 Defendants were attempting to collect the alleged debt on behalf of the Association, a third party creditor, and not in their true names.

7.11 Defendants’ respective collection activities were unrelated to the operation of a business other than that of a collection agency.



7.12 P&M has never obtained a collection agency license and thus violated the WCAA, including RCW 19.16.110 and RCW 19.16.260. *See, e.g., Snyder v. Daniel N. Gordon, P.C.*, 2012 WL 3643673, at *6 (W.D. Wash. 2012).

7.13 Yalnes has never obtained a collection agency license and thus violated the WCAA, including RCW 19.16.110 and RCW 19.16.260.

Violation of RCW 19.16.250(8) and RCW 19.16.250(9)

(Against P&M: Count 35)

(Against Yalnes: Count 20)

7.14 Under RCW 19.16.250(8), a collection agency must provide numerous pieces of information in its debt collection attempts, including but not limited to itemization of amounts owed, the name of the collection agency and its address, and the name of the original creditor.

7.15 On information and belief, the emails Yalnes sent to the Sonerius in or about August 2016 were the first written communication to the Sonerius from Yalnes. Yalnes failed to communicate the amount owing on the obligation at the time Yalnes was hired by the Association, nor was there an itemization of the claim or identification of any components of the claim in any meaningful capacity.

7.16 On information and belief, P&M's November 11, 2016 letter was the first written communication to the Sonerius from P&M. On information and belief, this letter did not include, among other things, an itemization of amounts owed.

7.17 Defendants failed to comply with and thus violated RCW 19.16.250(8) and/or RCW 19.16.250(9).

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Violation of RCW 19.16.250(12)
(Against Yalnes: Count 21)

7.18 RCW 19.16.250(12) prohibits any communication with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney.

7.19 Yalnes violated RCW 19.16.250(12) by communicating with the Sonerius, the alleged debtor, after notification in writing from an attorney representing them that all further communications should be addressed to their attorney.

7.20 Despite having written communication from the Sonerius' attorney, and acknowledgment of that correspondence by a return email, Yalnes still contacted the Sonerius on several occasions.

7.21 Accordingly, Yalnes violated RCW 19.16.250(12) in at least several instances.

Violation of RCW 19.16.250(13)
(Against P&M: Counts 36)
(Against Yalnes: Count 22)

7.22 RCW 19.16.250(13) prohibits any communication with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language.

7.23 As a result of Defendants' above-described actions, the Sonerius were harassed, intimidated, threatened, and embarrassed.



7.24 Defendants above-described actions, including threats to take actions that could not be legally taken and communications with the Sonerius in a manner designed to intimidate and frighten them into paying the alleged debt, violated RCW 19.16.250(13).

Violation of RCW 19.16.250(15)

(Against P&M: Counts 37)

(Against Yalnes: Count 23)

7.25 RCW 19.16.250(15) prohibits any communication with the debtor representing or implying that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

7.26 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

7.27 Defendants violated RCW 19.16.250(15) by representing or implying that the exiting obligation may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing claimed obligation.

7.28 Accordingly, Defendants violated RCW 19.16.250(15) on numerous occasions.

Violation of RCW 19.16.250(16)

(Against P&M: Counts 38-45)

7.29 RCW 19.16.250(16) prohibits threats to take any action against the debtor which the collection agency cannot legally take at the time the threat is made.



7.30 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

7.31 P&M threatened to take action P&M could not legally take when P&M:

- i. Threatened to add interest to the principal.
- ii. Threatened to add collection costs to the principal.
- iii. Threatened to add reasonable attorney's fees to the principal.
- iv. Threatened to not release the lien when the lien was improperly asserted and recorded (each occasion being a violation).
- v. Threatened to foreclose the lien against the Sonerius' condominium.
- vi. Threatened to collect a debt, including while acting as a collection agency without a license.
- vii. Threatened to bring a lawsuit against the Sonerius, including while acting as a collection agency without a license.
- viii. Threatened to accelerate the assessments, and/or require security deposit of 12 months' assessments, even though the Sonerius were not delinquent or otherwise in default.

7.32 Accordingly, P&M violated RCW 19.16.250(16) at least on eight (8) occasions.

Violation of RCW 19.16.250(21)

(Against P&M: Counts 46)

(Against Yalnes: Count 24)

7.33 RCW 19.16.250(21) prohibits the collection or attempted collection of any amounts in addition to the principal amount of a claim other than allowable interest, collection costs, or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.



7.34 Defendants violated RCW 19.16.250(21) by collecting or attempting to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees *expressly authorized by statute*.

7.35 Defendants demanded money (by phone and in the written correspondence) for a obligation that was not in fact delinquent or otherwise in default; thus, all interest and fees stemming from the alleged obligation were not allowable.

7.36 Even if the obligation was in default, Defendants sought amounts which could not be legally collected.

7.37 P&M also attempted to recover certain collection costs, contrary to Washington law.

7.38 P&M attempted to collect an estimated legal fee which was not due and, therefore, not permitted.

7.39 Each attempt to collect money from the Sonerius constitutes a separate attempt to collect the debt.

7.40 Accordingly, Defendants violated RCW 19.16.250(21) upon each debt collection attempt, including but not limited to, the telephone calls and the letters.

7.41 Accordingly, Defendants violated RCW 19.16.250(21) on several occasions.

Violation of RCW 19.16.250(22)

(Against P&M: Counts 47)

(Against Yalnes: Count 25)

7.42 Under RCW 19.16.250(22), a collection agency may not procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or



1 acknowledgment under which a debtor may be required to pay any sum other than principal,
2 allowable interest.

3 7.43 Through telephone calls and written correspondence with the Sonerius,
4 Defendants procured a promise, collected, and attempted to collect sums other than principal
5 and allowable interest in the form of illegal interest, collection costs, and attorney fees

6 7.44 Accordingly, Defendants violated RCW 19.16.250(22).

7 **VIII. WASHINGTON'S CONSUMER PROTECTION ACT**

8 8.1 The Sonerius re-allege the foregoing allegations and incorporate these
9 allegations by reference as if fully set forth herein.

10 8.2 Under the CPA, "unfair or deceptive acts or practices in the conduct of any
11 trade or commerce" are unlawful. To prevail in a private claim under the Act, a plaintiff
12 must establish five elements: (1) unfair or deceptive act or practice; (2) occurring in trade or
13 commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or
14 property; and (5) causation. *Hangman Ridge Training Stables, Inc v. Safeco Title Ins. Co.*,
15 105 Wn.2d 778, 780 (1986).

16 8.3 Even minimal or nominal damages constitute "injury" under the CPA. *Panag*
17 *v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 57 (2009). In fact, no monetary damages
18 need be proven and that non-quantifiable injuries, such as loss of goodwill would suffice.
19 *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 740 (1987).

20 8.4 Defendants violated the CPA.

21 8.5 Defendants' violations include, but are not limited to, the following:

22 a) A violation of the FDCPA is a *per se* violation of the CPA. *Panag*, 166 Wn.2d at 53.



- 1 b) A violation of the WCAA is a *per se* violation of the CPA. *Panag*, 166 Wn.2d at 53
2 (“[c]onsumer debt collection is a highly regulated field. When a violation of debt
3 collection regulations occurs, it constitutes a per se violation of the CPA...”); *see also*
4 RCW 19.16.440. Any violation of the WCAA prohibited practices section, RCW
5 19.16.250, or licensing sections is an unfair act or practice and/or unfair method of
6 competition in the conduct of trade or commerce affecting public interest.
- 7 c) These violations caused the Sonerius to suffer actual and statutory damages, and the
8 Sonerius are meant to be protected by the WCAA from unlawful collection practices.
- 9 d) These violations caused the Sonerius to suffer “injury” as that term is defined in the
10 relevant case law.
- 11 e) Yalnes also violated the CPA by, *inter alia*, unscrupulously mailing and continuing to
12 mail the Sonerius’ billing statements and other correspondence to the wrong address,
13 causing the Sonerius, unbeknownst to them, to fall behind on payments, and,
14 therefore, unduly subjecting them to further collection activities and associated
15 expenses, including by P&M, all the while Yalnes knew that it had entered incorrect
16 mailing information in its system for the Sonerius.
- 17 f) Yalnes also failed to post the Sonerius’ timely received payments to their account
18 until after the deadline so as to cause them to incur late fees and any related charges.
- 19 g) Yalnes issued false statement to the Sonerius and other members of the Association
20 that Yalnes had “successfully incorporated all the Association’s records into their
21 systems” when, in fact, Yalnes knew this representation was false.
- 22
23
24



h) Defendants' improprieties, violations, and misrepresentations, as alleged in this complaint, constitute unlawful, deceptive, and unfair business acts within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*

i) Defendants' business practices had the capacity to affect members of the public.

j) Defendants' wrongdoings occurred in the course of their business.

k) Additional plaintiffs may have been injured in the same manner as the Sonerius in this case.

l) But for Defendants' violations of the FDCPA, the WCAA, and the CPA, the Sonerius would not have the established injuries.

8.6 Defendants, personally and/or by and through their agents, employees, policies, and procedures have engaged in deceptive acts and practices, unfair acts and practices, and unfair methods of competition that have caused injury to the Sonerius.

8.7 Moreover, Sergey Petrov, Patrick McDonald, and Dean Pody created, participated in, or with knowledge approved of, Defendants' practices and procedures that violated the CPA; thus, making them personally liable. *See, e.g., State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322 (1976).

8.8 Overall, P&M committed at least forty seven (47) *per se* CPA violations, and Yalnes committed at least twenty eight (25) *per se* CPA violations.

8.9 Similarly, Defendants John Does 1-20 are high level employees or agents of Defendants entities that created, participated in, or with knowledge approved of Defendants' practices and procedures that violation the CPA, making them personally liable.

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Separate CPA violations

8.10 The Sonerius re-allege P&M's Counts 1 – 16 and Counts 33 – 47 as separate CPA violations, totaling thirty one (31) additional CPA violations on P&M's part.

8.11 The Sonerius re-allege Yalnes Counts 1 – 8 and Counts 9 – 25 as separate CPA violations, totaling seventeen (17) additional CPA violations on Yalnes' part.

8.12 Defendants' improprieties, violations, and misrepresentations, as alleged in this Complaint, constitute unlawful, deceptive, and unfair business acts within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*

8.13 Defendants' business practice, as described here, is unfair and deceptive.

8.14 Defendants' business practice had the capacity to affect members of the public. The defendants' wrongdoings occurred in the course of their business.

8.15 At all times material hereto, Defendants advertised and offered services the public at large. Additional plaintiffs may have been injured in the same manner the Sonerius.

8.16 As a direct result of Defendants' conduct, the Sonerius have been harmed and continues to be harmed.

8.17 P&M committed at least 31 separate CPA violations in addition to the above-described 47 WCAA and FDCPA separate *per se* violations of the CPA.

8.18 Yalnes committed at least 17 separate CPA violations in addition to the above-described 25 WCAA and FDCPA separate *per se* violations of the CPA.

8.19 RCW 19.86.140 authorizes a penalty of \$2,000.00 per violation.

8.20 RCW 19.86.090 authorizes treble damages to a limit of \$25,000.00.



IX. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

9.1 The Sonerius re-allege the foregoing allegations and incorporate these allegations by reference as if fully set forth herein.

9.2 Defendants could foresee that their actions would harm the Sonerius.

9.3 Defendants had a duty to the Sonerius.

9.4 Defendants breached their duty to the Sonerius.

9.5 Defendants made numerous false and material misrepresentations that, *inter alia*, the Sonerius were responsible for a certain amount, when the Sonerius were not responsible for the claimed amount, nor could they be under Washington law.

9.6 Defendants harassed the Sonerius by engaging in the above-described actions.

9.7 Defendants' actions have resulted in severe emotional distress and/or garden variety emotional distress for the Sonerius, and Yalnes' refusal to stop contacting them instead of contacting their counsel, and Defendants' insistence on attempting to coerce fees not legally owned, and reckless disregard for the Sonerius' personal reputation has caused a significant deterioration of the Sonerius' physical and mental health.

X. INJUNCTIVE RELIEF

10.1 A plaintiff may seek injunctive relief for violations of the CPA. RCW 19.86.090.

10.2 The Sonerius seek an Order enjoining Defendants from collecting debts in the unlawful manner described above from both the Sonerius and any other person similarly situated. *Scott v. Cingular Wireless*, 160 Wn.2d 843, 853 (2007).



10.3 The Sonerius also seek an Order enjoining Defendants from the above-described unlawful activities under the CPA.

10.4 The Sonerius have reason to believe these actions make up a pattern and practice of behavior and have impacted other individuals similarly situated.

10.5 Injunctive relief is necessary to prevent further injury to the Sonerius and to the general public.

10.6 Accordingly, the Court should issue the requested injunctive relief.

XI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

11.1 Defendants harassed the Sonerius by engaging in the above-described actions.

11.2 Judgment against Defendants for actual damages;

11.3 Statutory damages of \$1,000.00 for FDCPA violations;

11.4 Statutory damages of \$2,000.00 against P&M for each *per se* CPA violation of WCAA and FDCPA: at least \$94,000.00 in damages over the course of forty seven (47) *per se* CPA violations and \$62,000.00 in damages over the course of thirty one (31) separate CPA violations, totaling \$156,000.00 in damages.

11.5 Statutory damages of \$2,000.00 against Yalnes for each *per se* CPA violation of WCAA and FDCPA: at least \$50,000.00 in damages over the course of twenty five (25) *per se* CPA violations and \$34,000.00 in damages over the course of seventeen (17) separate CPA violations, totaling \$84,000.00 in damages.

11.6 Treble damages under RCW 19.86.090, calculated from the damages determined by the court:



11.7 Award of reasonable attorney fees and reimbursement of all costs for the prosecution of this action under RCW 19.86.090 and 15 U.S.C. §1692k(a)(3);

11.8 Disgorgement pursuant to RCW § 19.16.450 of all interest, service charges, attorney fees, collection costs, delinquency charges, or any other fees or charges otherwise legally chargeable to the debtor on such claim, collected by Defendants from Plaintiffs;

11.9 Injunctive relief under RCW 19.86.090 as described above;

11.10 Punitive damages as applicable; and

11.11 Such other and further relief as the court deems just and proper.

XII. TRIAL BY JURY

12.1 Pursuant to the seventh amended to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

DATED this 16th day of June, 2017.

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